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Supreme Court, U.S.
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No. 02-649

In the Supreme Court of the United States
October Term, 2002

DEE-K ENTERPRISES, INC. and
ASHEBORO ELASTICS CORP.,

Petitioners,

v.

HEVEAFIL SDN. BHD., *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BY THE AMERICAN ANTITRUST INSTITUTE TO OBJECTION TO THE MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Respondents have opposed the motion for leave to file an amicus brief by the American Antitrust Institute ("AAI") baselessly asserting that the AAI's amicus brief contributes nothing to the case. AAI believes that respondents' opposition has no merit and warrants only a brief response.

It is hornbook law that this Court routinely grants motions for leave to file amicus briefs. *See, e.g.*, Robert L. Stern & Euguene Gressman, *Supreme Court Practice*, § 6.04 at 466 (2002 ed.). Simply because they disagree with the views expressed in the AAI's amicus brief, respondents seek to give the brief no weight. But this Court should give considerable weight to the AAI's amicus brief. Among those sitting on the American Antitrust Institute's Advisory Board are four former Assistant Attorneys General for the Antitrust Division of the United

States Department of Justice and numerous distinguished private practitioners. As a non-profit, education and research institute concerned with the integrity of antitrust enforcement, the AAI possesses a collective independent judgment and experience on antitrust matters -- including the question presented here -- that the private parties opposing each other in this case simply do not possess.

Respondents also contend that the AAI's amicus brief should not be considered by this Court because, according to respondents, the AAI's brief is "duplicative" of the points made in the petition for certiorari. That is not true. AAI's amicus brief devotes an entire section to the importance of the question presented here including numerous references to speeches from the Assistant Attorneys General for the Antitrust Division in addition to citations to briefs filed by the United States government in cases addressing the very subject at issue here. None of this highly relevant and informative material appears anywhere in the petition for certiorari. Moreover, despite respondents' protestations to the contrary, AAI's amicus brief does not present precisely the same conflict as the petition for certiorari. The AAI views the conflict among the circuits in starker terms than petitioners. As the AAI's amicus brief explains, the Fourth Circuit essentially acknowledged the conflict with the Third Circuit in *Carpet Group*. The Fourth Circuit's half-hearted efforts to distinguish *Carpet Group* fell far short.

Finally, the AAI's amicus brief brings to the forefront several important points nowhere addressed in the petition for certiorari: namely, that the Fourth Circuit's decision seriously undermines the bedrock principle that the antitrust laws are designed to protect U.S. consumer welfare, that the Fourth Circuit's decision resurrects a flawed "balancing" analysis of a type this

Court rejected in *Hartford Fire*, and that the Fourth Circuit's decision is out-of-step with the views of the federal government antitrust enforcement agencies. *See* Amicus Br. at 7-12.

CONCLUSION

For the reasons stated herein, and for the reasons in the Motion For Leave To File Brief For The American Antitrust Institute As Amicus Curiae In Support Of Petitioner, this Court should grant the motion.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On this 11th day of December 2002, I certify that a true and correct copy of the Reply By The American Antitrust Institute To Objection To The Motion For Leave To File Brief As Amicus Curiae was served in the above-captioned case upon counsel of record for Petitioners and Respondents via first-class U.S. mail, postage prepaid, to the following address:

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December 11, 2002

Via First-Class Mail
William K. Suter
Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RE: *Dee-K Enterprises, Inc. and Asheboro Elastics Corp. v. Heveafil SDN BHD. et al., No. 02-649*

Dear Mr. Suter:

Enclosed please find the original and eleven copies (11) of the Reply By The American Antitrust Institute To Objection To The Motion For Leave To File Brief As Amicus Curiae. Please date-stamp the extra copy and return it to us in the enclosed self-addressed envelope.

Sincerely yours,

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DEE-K ENTERPRISES, INC. and
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On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

OBJECTION TO THE MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 37.5 of the Rules of this Court, Respondents Heveafil Sdn. Bhd. and Filmax Sdn. Bhd. ("Respondents") object to the Motion for Leave to File Brief as Amicus Curiae ("Motion") by the American Antitrust Institute ("Movant"). Both of Movant's arguments simply restate points made by Petitioners, and for that reason the Motion should be denied. Sup. Ct. R. 37.1 ("An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored."); *see also* Sup. Ct. R. 37.2(b) (providing that motions for leave to file amicus briefs are "not favored").

Movant's Arguments Simply Restate Points Made by Petitioners.

When counsel for Movant requested Respondents' consent to file a brief as amicus curiae, Respondents' undersigned counsel requested a copy of Movant's draft brief to ensure that

Respondents would not be consenting to a duplicative amicus brief in contravention of Rule 37.1. Movant's counsel declined to provide a draft; accordingly, Respondents declined Movant's request for consent.

Validating Respondents' concern about redundancy, Movant's brief fails to make any points not already made by Petitioners. Movant's first argument is that this case presents an important question because the Fourth Circuit's opinion will hamper government enforcement efforts. Petitioners devoted an entire section of their Petition to the same argument. Pet. 17-19. Movant's second argument is that the Fourth Circuit's decision conflicts with the Third Circuit's in *Carpet Group International v. Oriental Rug Importers Ass'n*, 227 F.3d 62 (3d Cir. 2000). Again, Petitioners devoted an entire section of their Petition to that argument. Pet. 14-17. This redundancy persists for each of the numbered sub-points in Movant's second argument, each of which is also made in the Petition. Movant's brief, therefore, fails to serve the purpose for which amicus briefs are intended: to inform the Court about matters not addressed by the parties. Instead, Movant's duplicative brief will merely burden the Court.

Respectfully submitted,

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